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*Kevin L. Smith*

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ATTORNEYS FOR APPELLEE:

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**IN THE  
COURT OF APPEALS OF INDIANA**

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No. 49A02-0806-CR-551

**January 13, 2009**

**FRIEDLANDER, Judge**

Kenny Sturdivant appeals his convictions of Battery,<sup>1</sup> Intimidation,<sup>2</sup> and Bribery,<sup>3</sup> all as class C felonies, and Carrying A Handgun Without A License,<sup>4</sup> a class A misdemeanor. Sturdivant challenges all four convictions on the same basis, i.e., insufficient evidence.

We affirm.

At about midnight on April 17, 2008, Jeremiah Phelps drove to a house on North Campbell Avenue in Indianapolis to buy drugs. When he arrived, Phelps saw four people talking in the driveway. Phelps joined the group. Less than five minutes later, Sturdivant exited from the house and demanded money that he claimed Phelps owed him. Phelps had known Sturdivant for three or four years and had bought drugs from him on approximately twelve previous occasions. When Phelps told Sturdivant he did not have the money, Sturdivant removed a pistol from his waistband and began to beat Phelps with it. Sturdivant struck Phelps four or five times, each time causing Phelps to fall to the ground. Eventually, Phelps told Sturdivant he had money in his van. When Phelps climbed into his van and started it, Sturdivant warned him that if he tried to leave, Sturdivant would shoot him. Phelps put the van in gear and drove away. As he did so, Sturdivant fired four or five shots at Phelps's van. One shot broke out a window and two other shots struck Phelps, one in the torso.

A short time later, at approximately 1:45 a.m., Officer Jeffrey Augustinovicz of the Indianapolis Metropolitan Police Department received a dispatch call related to the incident.

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<sup>1</sup> Ind. Code Ann. § 35-42-2-1 (West, PREMISE through 2008 2nd Regular Sess.).

<sup>2</sup> Ind. Code Ann. § 35-45-2-1 (West, PREMISE through 2008 2nd Regular Sess.).

<sup>3</sup> Ind. Code Ann. § 35-44-1-1 (West, PREMISE through 2008 2nd Regular Sess.).

<sup>4</sup> Ind. Code Ann. § 35-47-2-1 (West, PREMISE through 2008 2nd Regular Sess.).

When he met with Phelps, Officer Augustinovicz observed that Phelps had lacerations on his face and had suffered two bullet wounds. Officer Augustinovicz saw a nearby van with bullet holes in it, windows broken out, and blood throughout the van. Officer Michael Watkins also went to that location and took photographs of Phelps and the van. After listening to Phelps's statement, Officer Watkins traveled to the Campbell Avenue address that Phelps provided and took photos of the house and glass in the street where Phelps claimed he had parked his van before the shooting occurred.

Phelps was later interviewed by a Detective Walters about the incident. Phelps told Detective Walters that he went to that location with another person to buy crack cocaine. We note here that Phelps later admitted he went to Sturdivant's house alone to buy drugs, i.e., without a companion. Phelps explained at trial that he made up the story about a companion because he was on probation at the time and feared he would get into trouble if it was discovered that he was driving without a license. Phelps told Detective Walters that Sturdivant came out of the house and demanded money for previous buys. Phelps then claimed to have told Sturdivant that he was mistaking Phelps for someone else and that he did not owe Sturdivant any money. Phelps claimed that Sturdivant responded by pistol-whipping him. Phelps then claimed that his companion fled the scene on foot, while Phelps went to the van and drove away, suffering bullet wounds as he left. Phelps described the suspect and told the detective he knew the suspect only as "Kenny." *Transcript* at 44. Detective Walters developed a photo array of suspects, from which Phelps identified Sturdivant's photograph as the person who beat and shot him. Later that same day,

Sturdivant called Phelps and “asked [Phelps] to get the cops off him and offered [Phelps] a thousand dollars and some cocaine if [he] would.” *Id.* at 47.

Sturdivant was charged with criminal confinement, battery, intimidation, bribery, and carrying a handgun without a license. Following a bench trial, he was found guilty of all charges except criminal confinement, of which he was found not guilty.

Sturdivant contends the evidence was insufficient to support his convictions. This claim is based upon his assertion that the convictions rest entirely upon the testimony of Phelps, and that Phelps’s testimony is incredible as a matter of law. Generally, when considering a challenge to the sufficiency of evidence supporting a conviction, we neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). This review “respects ‘the [fact-finder]’s exclusive province to weigh conflicting evidence.” *Id.* at 126 (quoting *Alkhalidi v. State*, 753 N.E.2d 625, 627 (Ind. 2001)). Considering only the probative evidence and reasonable inferences supporting the verdict, we must affirm “‘if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.’” *McHenry v. State*, 820 N.E.2d at 126 (quoting *Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)). The uncorroborated testimony of one witness may be sufficient by itself to sustain a conviction on appeal. *Pinkston v. State*, 821 N.E.2d 830 (Ind. Ct. App. 2004), *trans. denied*.

Phelps testified that Sturdivant was the person who beat and then shot him. Sturdivant contends that by application of the principal of incredible dubiousity, Phelps’s testimony is not

worthy of belief. For testimony to be so inherently incredible that it is to be disregarded on this basis, “the witness must present testimony that is inherently contradictory, wholly equivocal or the result of coercion, and there must also be a complete lack of circumstantial evidence of the defendant’s guilt.” *Clay v. State*, 755 N.E.2d 187, 189 (Ind. 2001). We conclude that the doctrine of incredible dubiousity has no application here.

We note first that there was evidence to corroborate Phelps’s testimony. Phelps’s injuries and the damage caused to his van, as witnessed by two police officers shortly after the occurrence, are consistent with his account of the events. Moreover, also shortly after the incident, Detective Walker traveled to the location where Phelps claimed it occurred and found broken glass in the street. When Detective Walters went the next day to investigate, he spoke with a woman at that address who identified herself as Maggie Sturdivant. She denied knowing “Kenny” or what his name was. Finally, we note that the claim that Phelps is not worthy of belief is premised primarily upon the fact that he initially lied to Detective Walters about having a companion at the time of these events. He admitted at trial that he had lied in that regard, and offered a plausible explanation for having done so, i.e., he wanted to avoid the consequences of having violated the conditions of his parole by driving a vehicle while his license was suspended. This does not render his trial testimony inherently unbelievable, especially in view of the fact that all of this was placed before the trial court at trial.

In summary, the incredible dubiousity rule does not apply so as to disqualify Phelps’s testimony. That being the only claim of error, we affirm the convictions.

Judgment affirmed.

MAY, J., and BRADFORD, J., concur